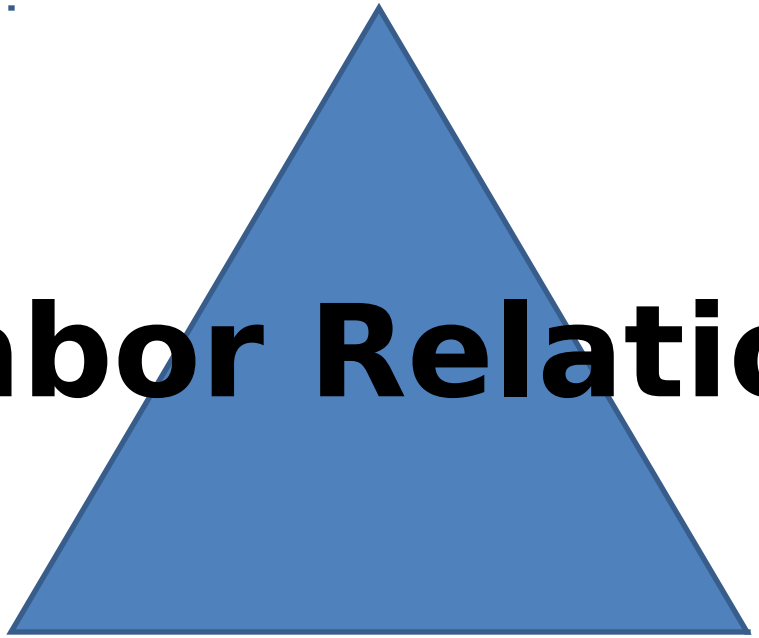
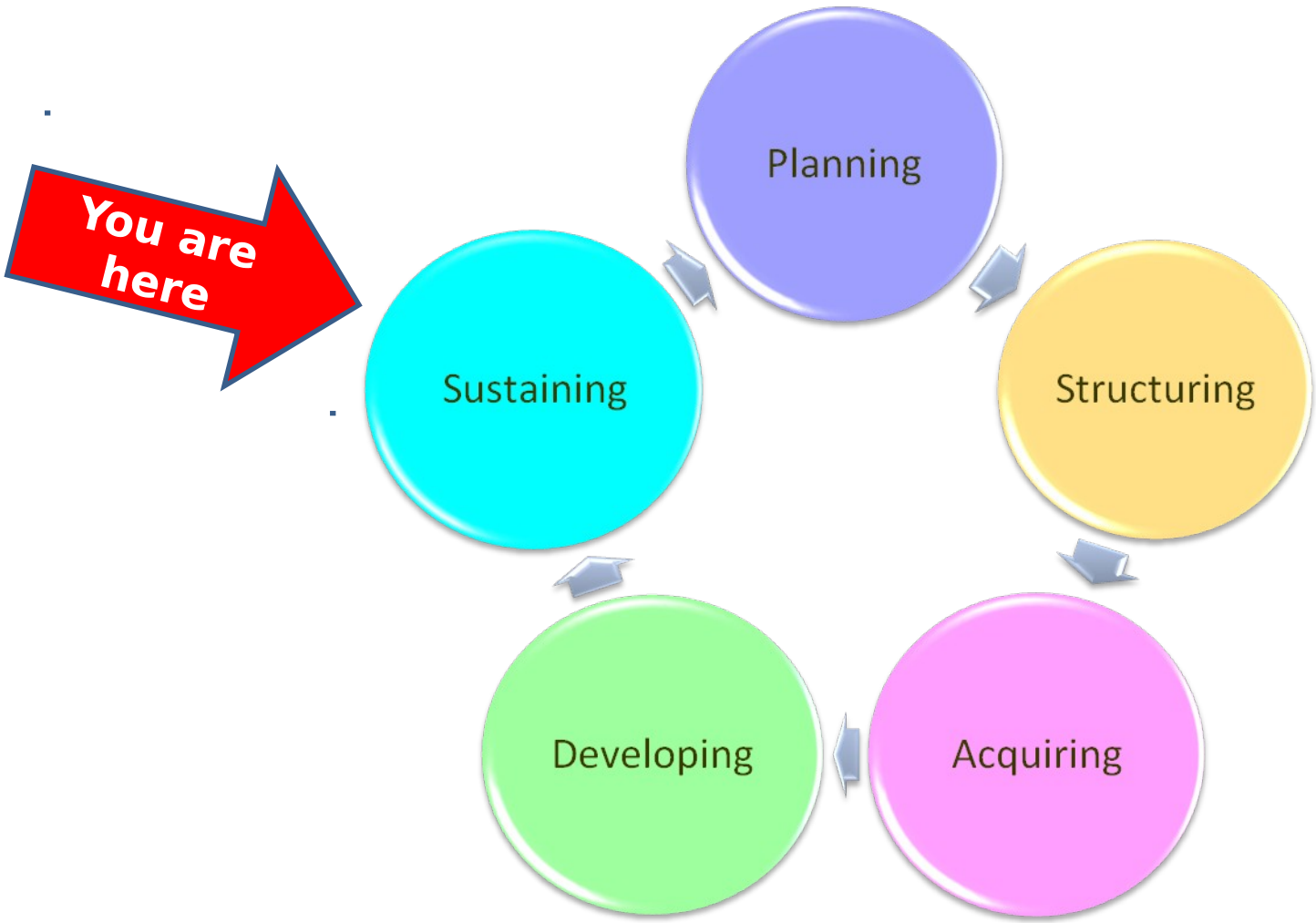
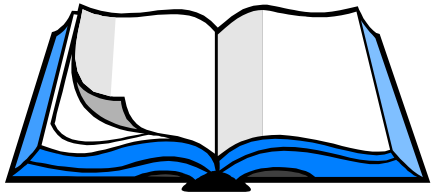
Module 7 Sustaining



Labor Relations

CHRM Life Cycle





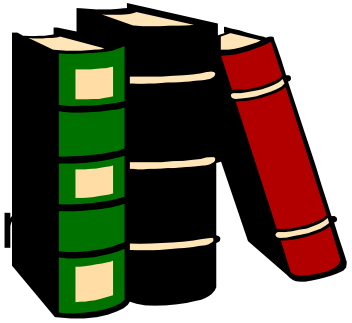
Learning Objectives – Labor Relations

After completion of this lesson, participants will be able to:

1. Identify the rights and responsibilities of management, unions and employees under the Labor Management Relations Statute.

2. Identify workplace matters that have collective bargaining implications.

3. Identify workplace discussions and situations that require union notification



Legal Framework

Federal Service Labor-Management Relations Statute - 5 USC 71

Case Law - Federal Labor Relations Authority and Court Decisions

Collective Bargaining Agreement

Resources

- Supervisor's Guide on Labor Management Relations

http://www.cpms.osd.mil/faslerd/faslerd_index.aspx - and click on Supervisor's Guide under Products and Services)

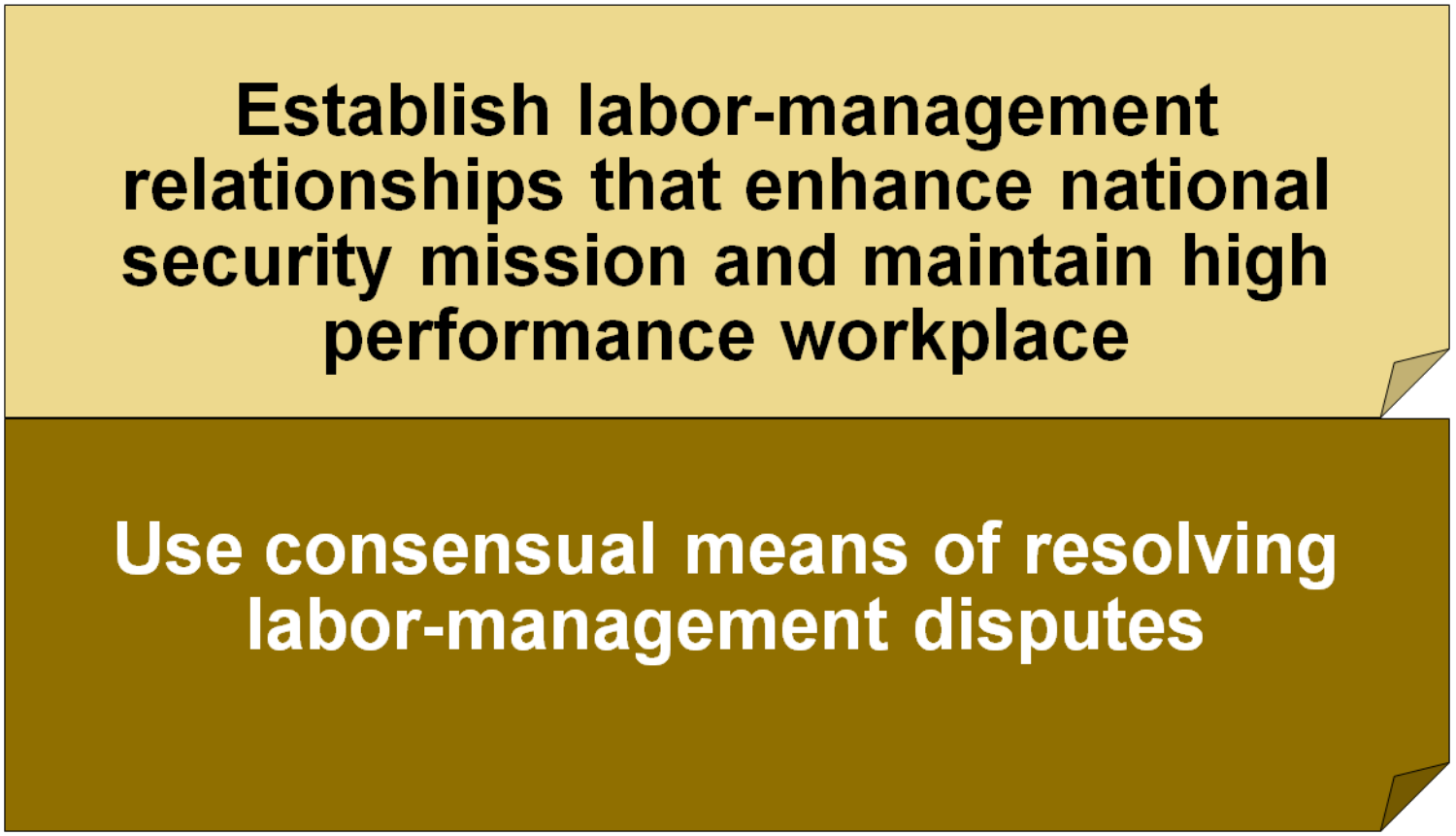
- CPAC Labor Relations Specialist

The Law

"... labor organizations and collective bargaining in the civil service are in the public interest."

§5 USC 7101

DoD Policy


Establish labor-management relationships that enhance national security mission and maintain high performance workplace
Use consensual means of resolving labor-management disputes

DOD Civilian Personnel Manual 1400.25M, Subchapter 711

Labor Union

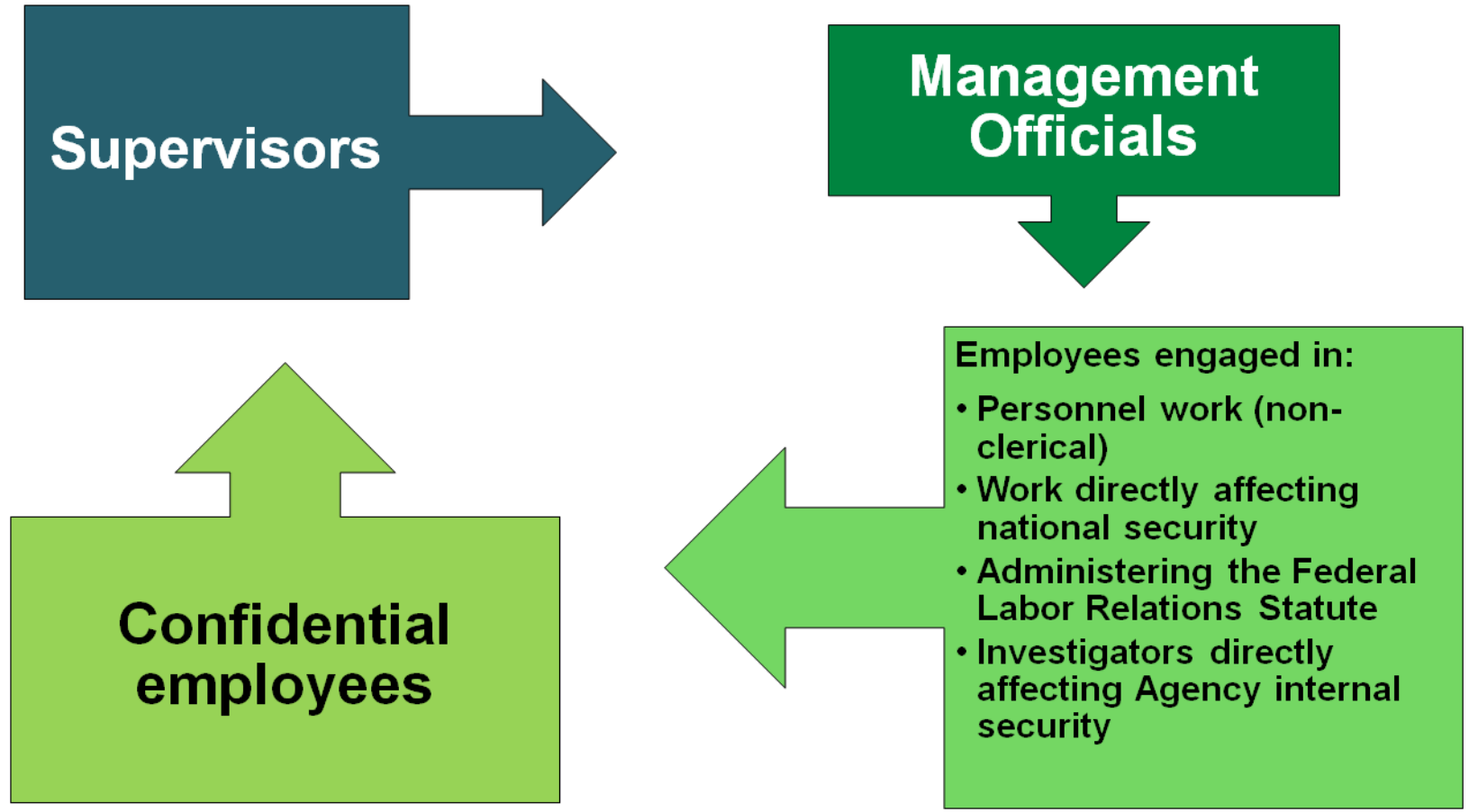
An organization that works to represent the common interests and rights of bargaining unit employees, chiefly by way of collective bargaining

§5 USC 7103 (a) (4)

What is a Bargaining Unit?

A group of employees with common interests who are represented by a labor union in their dealings with Agency management

Excluded from Bargaining Unit


Supervisors
Management Officials
Employees engaged in:
• Personnel work (non-clerical)
• Work directly affecting national security
• Administering the Federal Labor Relations Statute
• Investigators directly affecting Agency internal security
Confidential employees

Most Federal employees are covered by the Labor Relations Statute

Employee Rights

- Form, join or assist a labor organization or refrain from doing so without fear of penalty or reprisal

- Act as a Union representative (Shop Steward, Local President, National Representative, etc)

Union Rights

- Represent and act for all bargaining unit employees exclusively at formal discussions and investigatory interviews
- Request and receive information
- Negotiate with the Agency over the terms and conditions of employment

Union Responsibilities

- Represent interests of all bargaining unit members, regardless of union membership

- Negotiate with management in “good faith”

Official Time

- Contract negotiations
- Representational duties
- Representing employees on grievances
- Federal Labor Relations Authority proceedings

Management Rights

To make basic management decisions

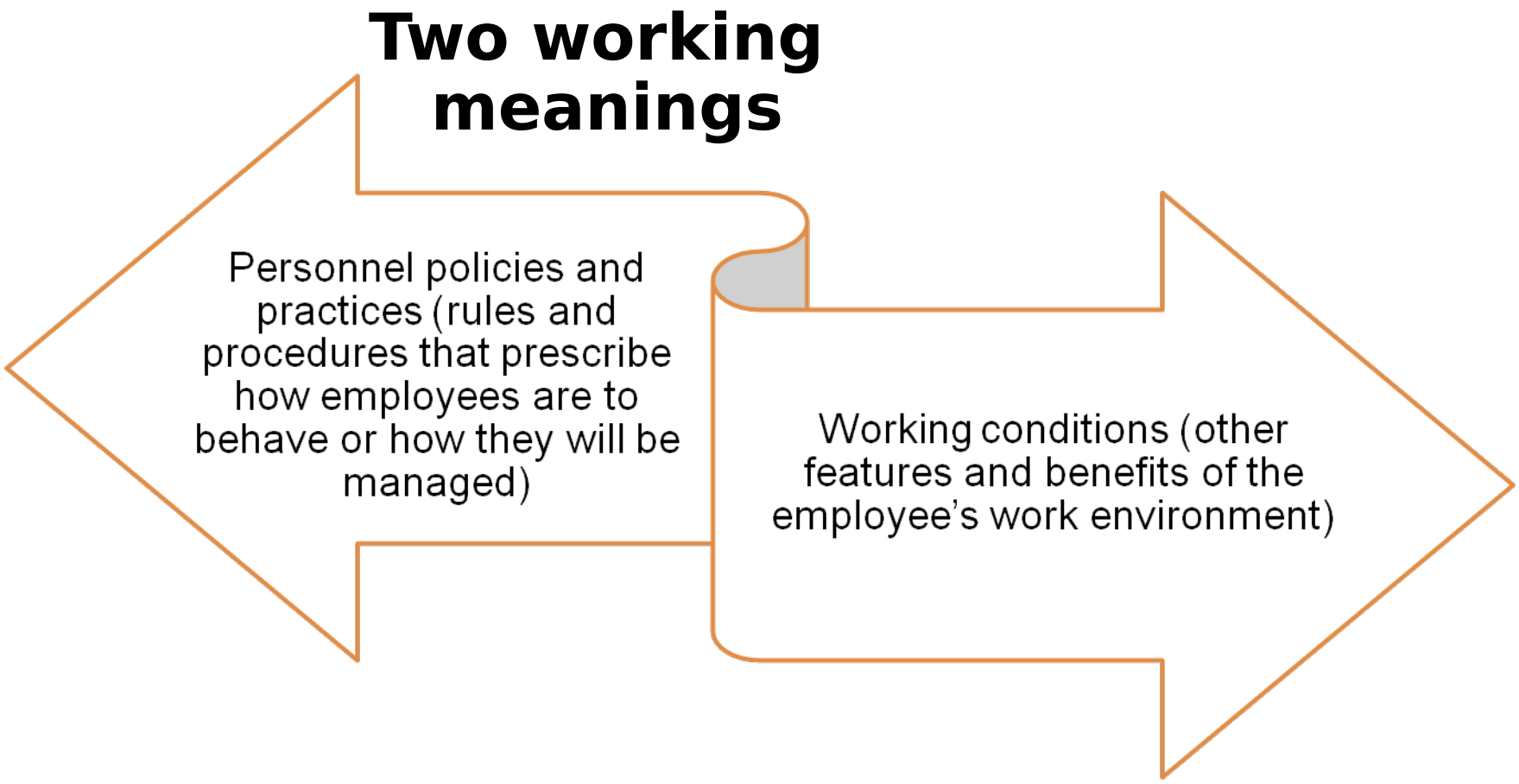
- Mission
- Budget
- Organizations
- Security
- Emergencies

To take personnel actions

- Hire, direct, layoff, and retain employees
- Remove, reduce in grade or pay, take disciplinary actions
- Assign work, contract out, promote

5 USC 7106(a)

Conditions Of Employment


Two working meanings
Personnel policies and practices (rules and procedures that prescribe how employees are to behave or how they will be managed)
Working conditions (other features and benefits of the employee's work environment)

Workplace Changes

Workplace changes that trigger management's obligation to bargain:

- Working conditions
- Personnel policies and practices
- Affecting bargaining unit employees
- Except policies...
  - ✓ *Provided for by statute*
  - ✓ *Relating to classification*
  - ✓ *Relating to political activities*

Workplace Changes

- Must notify Union – before implementation
- Communicate what changes are intended and when they would become effective
- If there is no response, implement on the specified date
- If the Union asks to negotiate, normally bargain to completion before affecting the proposed change

Workplace Changes

Do Not	Do Not	Do Not	Do Not
• Assume that there is no obligation to notify the Union because you are exercising a management right	• Notify the Union at the last minute, without giving a reasonable amount of time to consider the change	• Implement before reaching agreement	• Make changes without notification in hopes that the Union won't notice

Past Practice

- Pertains to condition of employment
- Unwritten
- Consistently practiced over extended period of time
- Known about and accepted by both parties
- Not contrary to law or regulation
  - *Note: Changing a past practice triggers a bargaining obligation*

Formal Discussions

- One or more management official and one or more employee or representative; and
- Concerns a grievance or any personnel policy or practice or other general condition of employment -- not individual concerns:
  - ✓ Union must be invited
  - ✓ Union selects their representative
  - ✓ Union allowed to comment during meeting
  - ✓ Cannot disrupt meeting
- Not normal shop talk

Formal Discussions

- DISCUSSION - Can be one-way
- FORMAL INDICATORS
  - ✓ First-level supervisor or higher level management
  - ✓ Location of meeting
  - ✓ Length of meeting
  - ✓ How meeting was called (spontaneously or scheduled in advance)
  - ✓ Written formal agenda
  - ✓ Mandatory attendance
  - ✓ Manner conducted (attendance & comments noted)

Investigative Interviews

Weingarten Rights
When an employee is called to an investigatory interview and has reasonable belief that disciplinary action could result, the employee has the right to request union representation

Investigative Interviews

Elements defining investigative interviews

- Nature of interview is investigatory
- Employee reasonably believes disciplinary action could result
- Employee requests union representation

Investigative Interviews

("WEINGARTEN RIGHT")

- Not like Miranda rights
  - ✓-Check the labor agreement
- Union can participate in discussion but cannot answer for the employee
- Not applicable to performance counseling or issuance of notice of discipline

Investigative Interviews

("WEINGARTEN RIGHT")

- If the employee requests a representative, supervisor may:

✓Simply end the meeting and not call in a union rep

✓Temporarily stop the meeting long enough to obtain union representation

✓Offer the employee the alternative to continue w/o union representation or forgo having a meeting to make his/her points

✓Remove the employee's "reasonable belief" by stating that the employee will not be disciplined

EXERCISE TIME

Read each situation and decide if it is (a) a formal discussion; (b) a Weingarten examination; (c) neither; or (d) both. Be prepared to explain your answer.

Weingarten or Formal Discussion?

1.An employee is called into an interview with a security officer investigating the possible theft of government property. The officer asks the employee where she worked the date the property disappeared. The employee asks for a union representative.

2.A meeting held with employees to discuss a new dress code by a manager instructed to do so from higher-level management. It lasts 20-25 minutes. Other managers were present. Most, if not all, employees attended, but whether it was mandatory is unclear.

3.An employee who has elected to represent himself meets with management to present his grievance regarding lack of overtime consideration IAW overtime procedures.

Weingarten or Formal Discussion?

4.Union representative directed by the new commander to discontinue attendance at his weekly command staff meetings. There is nothing in writing allowing it.

5.A first line supervisor holds an impromptu meeting of bargaining unit employees to reinforce existing shop safety procedures.

6. A supervisor meets with a bargaining unit employee to find out why he is late for the third time in two weeks. Midway through the meeting, the employee requests union representation.

Unfair Labor Practices

Similar to those in private sector
Primarily protects employee rights
Strikes are prohibited
Informational picketing is allowed

Unfair Labor Practices

MANAGEMENT

- Interfere with, restrain or coerce any employee in the exercise of any right under the Statute
- Encourage or discourage an employee from becoming a member of the union by acts of discrimination
  - Sponsor or control the union
  - Discriminate against an employee for filing a ULP charge

Unfair Labor Practices

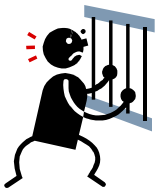
MANAGEMENT

- Refuse or fail to bargain or consult in good faith
- Refuse or fail to cooperate in negotiation impasse proceedings or decisions
- Enforce a newly issued rule or regulation which conflicts with the terms of an existing collective bargaining agreement
- Refuse or fail to comply with any provision of the Statute

Unfair Labor Practices

UNION

- Cause or attempt to cause management to discriminate against an employee because he/she has exercised a right under the Statute
- Coerce, discipline or fine an employee as a means of hindering his/her work performance
- Discriminate in membership
- Interfere with, restrain or coerce employees with respect to union membership, non-membership, or any other right under the Statute



Unfair Labor Practices

UNION

- Refuse or fail to cooperate in negotiation impasse proceedings or conditions
- Call or participate in a strike, picketing activity, work stoppage, or slowdown
- Fail to take action to prevent or stop strikes or work stoppages
- Refuse or fail to comply with any provision of the Statute

Avoiding Unfair Labor Practices

Most ULPs deal with management's getting involved with:

- Sponsoring or stating a preference of one union over another during a representation election
- Changing policies, practices or working conditions without proper notification, consultation or negotiation
- Interfering with employees in the exercise of their rights

Avoiding Unfair Labor Practices

To be safe in regard to ULPs, management and its representatives should:

- Remain neutral with respect to an employee's rights
- Not discredit the union or its activities in the presence of bargaining unit employees
- Not fail to fulfill obligations to the union

Negotiated Grievance Procedure

- Exclusive procedure for Bargaining Unit Employees
- Only 5 statutory exceptions
  - ✓ Others negotiable
  - ✓ May include EEO & adverse actions
- Subject to binding arbitration if not settled
- Limited appeal of arbitrator's award

Arbitration

- Any grievance not satisfactorily settled under the negotiated grievance procedure shall be subject to binding arbitration:
  - ✓ May be invoked by management or the union (not by the employee)
  - ✓ Binding on both parties

Arbitration

- Arbitrator may award compensatory damages
- Exceptions to award may be filed within 30 days
- The Federal Labor Relations Authority may modify an award
- Costs for arbitration based on Collective Bargaining Agreement

3rd Parties in Disputes

Federal Labor Relations Authority

- Resolves negotiability disputes

Federal Mediation & Conciliation Service

- Mediates negotiation impasses

Federal Service Impasses Panel

- Resolves negotiation impasses

Labor Relations Review

1. Identify the rights and responsibilities of management, unions and employees under the Labor Management Relations Statute.

2. Identify workplace matters that have collective bargaining implications.

3. Identify workplace discussions and situations that require union notification.

Questions?